

[6 August, 2001]

RAJYA SABHA

SEBI's observations regarding scams in share market

1525. SHRI NILOTPAL BASU: Will the Minister of DISINVESTMENT be pleased to state:

(a) whether Government are aware that the Security Exchange Board of India (SEBI) has made critical observations about several corporates, foreign institutional investors, investment bankers, etc. in connection with some of the scams in the share market through price rigging and other legal violations;

(b) if so, whether Government understand that some of these entities may also be involved in the disinvestment process as global advisors;

(c) if so, whether any such connection has come to the notice of Government;

(d) if so, the details thereof; and

(e) if not, whether Government will put in place any mechanism to monitor this?

THE MINISTER OF STATE OF THE DEPARTMENT OF DISINVESTMENT (SHRI ARUN SHOURIE): (a) Yes, Sir.

(b) Yes, Sir.

(c) Yes, Sir.

(d) and (e) It has been noted that Securities & Exchange Board of India has passed orders on 18.4.2001 and 4.6.2001 under Section 11 and 11B of the SEBI Act, 1992, against Credit Suisse First Boston (India) Securities Pvt. Ltd. Since Credit Suisse First Boston (Singapore) Ltd. is a member of the advising consortium to the Government for disinvestment in Videsh Sanchar Nigam Ltd. (VSNL), the matter is under examination and a show cause notice has been served on Credit Suisse First Boston (Singapore) Ltd. on 31.7.2001 in pursuance of the guidelines issued by the Government on 13.7.2001 for qualification of Advisors for disinvestment process. These guidelines (as Statement *see* below) have been sent to all other Advisors as well asking them to confirm that they are qualified to continue as Advisor in terms of these guidelines and furnish an undertaking accordingly.

Statement

No. 6/4/2001-DD-II

Government of India

Department of Disinvestment

Block 14, CGO Complex

New Delhi.

Dated 13th July, 2001.

OFFICE MEMORANDUM

Subject: Guidelines for qualification of Advisors for disinvestment process

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for selection of Advisors, so that the parties selected through competitive bidding inspire public confidence. Earlier, a set of criteria like sector experience, knowledge, commitment etc. use to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/disqualification of the parties to act as Advisors to the Government for the disinvestment transactions:—

(a) Any conviction by a Court of Law or indictment/adverse order by a regulatory authority for a grave offence against the Advising concern or its sister concern would constitute a disqualification. Grave offence would be defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of offence would be taken on a case to case basis after considering the facts of the case and relevant legal principles by the Government. Similarly, the decision in regard to the relationship between the sister concerns would be taken, based on relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.

(b) In case such a disqualification takes place, after the entity has already been appointed as Advisor, the party would be under an obligation to withdraw voluntarily from the disinvestment process, failing which the Government would have the liberty to terminate the appointment/contract.

(c) Disqualification shall continue for a period that Government deems appropriate.

(d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

(e) The disqualification criteria would come into effect immediately and would apply to all the Advisors already appointed by the Government for various disinvestment transactions, which have not yet been completed.

(f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.

(g) Henceforth, these criteria will be prescribed in the advertisements seeking Expressions of Interest (EOI) from the interested parties to act as Advisor. Further, the interested parties shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against the CEO or any of its directors/Managers/Employees, full details of such investigation including the name of the investigating agency, the charge/offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, similar undertaking will be obtained along with EOI. They would also have to give an undertaking that if they are disqualified as per the prescribed criteria, at any time before the transaction is completed, they would be required to inform the Government of the same and voluntarily withdraw from the assignment.

(h) The interested parties would also be required to give an undertaking that there exists no conflict of interest as on the date of their appointment as Advisors in handling of the transaction and that, in future, if such a conflict of interest arises, the Advisor would immediately intimate the Government of the same. For disinvestment proposes, 'conflict of interest' is defined to include engaging in any activity or business by the Advisor in association with any third Party, during the engagement, which would or may be reasonably expected to, directly or indirectly, materially adversely affect the interest of Government of India or the Company (being disinvested) in relation to the transaction, and in respect of which the Advisor has or may obtain any proprietary or confidential information during the engagement, that, if known to any other client of the

Advisor, could be used in any manner by such client to the material disadvantage of Government of India or the Company (being disinvested) in the transaction. The conflict of interest would be deemed to have arisen if any Advisor firm/concern, has any professional or commercial relationship with any bidding firm/concern for the same disinvestment transaction during the pendency of such transaction. In this context, both Advisor firm and bidding firm would mean the distinct and separate legal entities and would not include their sister concern, group concern or affiliates etc. The professional or commercial relationship is defined to include acting on behalf of the bidder or undertaking any assignment for the bidder of any nature, whether or not directly related to disinvestment transaction.

(i) On receiving information on conflict of interest, the Government would give the option to the Advisor to either eliminate the conflict of interest within a stipulated time or withdraw from the transaction and the Advisor would be required to act accordingly, failing which Government would have the liberty to terminate the appointment/contract.

(A.K. Tewari)

Under Secretary to the Government of India.

To

As per list attached.

News-item "BALCO sale a fraud"

1526. SHRI S. RAMACHANDRAN PILLAI: Will the Minister of DIS-INVESTMENT be pleased to state:

(a) whether Government's attention has been drawn to the news- item captioned "BALCO sale a fraud", which appeared in the Times of India, dated 17th April, 2001;

(b) whether it is a fact that the bureaucrats are deliberately turning the public sector companies into loss making units and an inquiry is needed to testify the facts; and

(c) if so, Government's reaction thereon?

THE MINISTER OF STATE OF THE DEPARTMENT OF DISINVESTMENT (SHRI ARUN SHOURIE): (a) Yes, Sir.